

Alaska Statute

TITLE 18 HEALTH, SAFETY, AND HOUSING

CHAPTER 12 LIVING WILLS AND DO NOT RESUSCITATE ORDERS

This Chapter consists of the following Sections:

- 18.12.010 Declaration relating to use of life-sustaining procedures.
- 18.12.020 Revocation of declaration.
- 18.12.030 Recording determination of terminal condition and contents of declaration.
- 18.12.035 Do not resuscitate orders and protocols.
- 18.12.037 Living will, organ donation, and DNR identification.
- 18.12.040 Treatment of qualified patients.
- 18.12.050 Transfer of patients.
- 18.12.060 Immunities.
- 18.12.070 Penalties.
- 18.12.080 General provisions.
- 18.12.090 Recognition of declarations and orders executed, issued, in another state
- 18.12.100 Definitions.

SECTION 18.12.010 Declaration relating to use of life-sustaining procedures.

(a) A competent person who is at least 18 years old may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn from that person. The declaration is given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions, except that, if the declaration contains an anatomical gift under AS 13.50, the gift takes effect upon the death of the person. The declaration shall be signed by the declarant, or another person at the declarant's direction. If signed by another person at the declarant's direction, the signer shall sign in the presence of two persons or a person who is qualified to take acknowledgements under AS 09.63.010. A person may not charge a fee for preparing a declaration.

(b) Except as provided under AS 13.50.014 - 13.50.016 for an anatomical gift contained in the declaration, it is the responsibility of the declarant to provide a copy of the declaration to the declarant's physician. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(c) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or

withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. I do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary. Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital when a do not resuscitate order is to be implemented for me, I do not want the do not resuscitate order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

OPTIONAL:

In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

Tissue:

Eyes

Bone and connective tissue

Skin

Heart

Other: \_\_\_\_\_

Limitations: \_\_\_\_\_

Organ:

Heart

Kidney(s)

Liver

Lung(s)

Pancreas

Other: \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature\_\_\_\_\_

Place\_\_\_\_\_

If another person is to sign for the declarant at the declarant's direction, the person signing for the declarant must sign in the presence of two persons or a person who is qualified to take acknowledgments under AS 09.63.010. The witness form below may be used for the two witnesses. The acknowledgement form below may be used for the person qualified to take acknowledgements.

#### WITNESS FORM

Witness\_\_\_\_\_

Address\_\_\_\_\_

Witness\_\_\_\_\_

Address\_\_\_\_\_ State

of\_\_\_\_\_

\_\_\_\_\_ Judicial District

#### ACKNOWLEDGMENT FORM

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged). \_\_\_\_\_ Signature  
of Person Taking Acknowledgement

\_\_\_\_\_ Title or Rank  
\_\_\_\_\_ Serial Number, if any.

(d) A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter, that an anatomical gift in the declaration complies with this chapter and AS 13.50, and that the declaration, including any anatomical gift contained in the declaration, is valid. HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 7 - 10 ch 80 SLA 1997)

SECTION 18.12.020 Revocation of declaration. (a) Except as provided in AS 13.50.050 for an anatomical gift, a declaration may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

(b) The attending physician or health care provider shall make the revocation a part of the declarant's medical record.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 11 ch 80 SLA 1997)

SECTION 18.12.030 Recording determination of terminal condition and contents of declaration. When an attending physician who has been provided a copy of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the contents of the declaration in the declarant's medical record.

SECTION 18.12.035 Do not resuscitate orders and protocols. (a) An attending physician may issue a do not resuscitate order for a patient of the physician. The physician shall document the grounds for the order in the patient's medical file.

(b) The Department of Health and Social Services shall, by regulation, adopt a do not resuscitate protocol that sets out a standardized method of procedure for the withholding of cardiopulmonary resuscitation by physicians and other health care providers. The regulations may not be adopted unless they have been approved by the State Medical Board.

(c) A health care provider other than a physician shall comply with the do not resuscitate protocol adopted under (b) of this section when presented with any of the following: DNR identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on a form prescribed by the Department of Health and Social Services. (d) Notwithstanding (c) of this section, if a person has made an anatomical gift of an organ under AS 13.50 or this chapter, and is in a hospital when a do not resuscitate order is to be implemented for the person, the do not resuscitate order may not be implemented until the donated organ can be evaluated to determine if it is suitable for donation. (e) A physician may not revoke a do not resuscitate order at the request of a person, and a person may not make a do not resuscitate order ineffective, unless the person making the request or proposing to make the order ineffective is the person for whom the order has been issued, or, if the person for whom the order has been issued is not capable of expressing an opinion on the subject, (1) the parent or guardian of the person for whom the order has been issued if the person for whom the order has been issued is under 18 years of age; or (2) a person to whom the person for whom the order has been issued has communicated the decision to make the order ineffective. HISTORY (Sec. 1 ch 104 SLA 1994; am Sec. 12 ch 80 SLA 1997)

SECTION 18.12.037 Living will, organ donation, and DNR identification. The Department of Health and Social Services shall develop standardized designs and symbols for DNR identification cards, forms, necklaces, and bracelets that signify, when carried or worn, that the possessor has executed a declaration under this chapter, that the declaration contains an anatomical gift, or that the possessor is a patient for whom a physician has issued a do not resuscitate order.

HISTORY (Sec. 1 ch 104 SLA 1994; am Sec. 13 ch 80 SLA 1997)

SECTION 18.12.040 Treatment of qualified patients. (a) A qualified patient or a patient for whom a physician has issued a do not resuscitate order has the right to make decisions regarding use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the patient is able to do so. If a qualified patient or patient for whom a physician has issued a do not resuscitate order is not able to make these decisions, the declaration or do not resuscitate protocol governs decisions regarding use of cardiopulmonary resuscitation and other life-sustaining procedures, unless the do not resuscitate order is revoked or made ineffective under AS 18.12.035(e).

(b) This chapter does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or alleviation of pain. The declaration may provide that the declarant does not want nutrition or hydration administered intravenously or by gastric tube.

(c) The declaration of a qualified patient known to the attending physician to be pregnant is given no effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 2 ch 104 SLA 1994; am Sec. 14 ch 80 SLA 1997)

SECTION 18.12.050 Transfer of patients. (a) An attending physician who is unwilling to comply with the requirements of AS 18.12.030 or who is unwilling to comply with the declaration of a qualified patient under AS 18.12.040 shall withdraw as attending physician but the withdrawal is effective only when the services of another attending physician have been obtained.

(b) If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter or a do not resuscitate order issued by an attending physician, or the facility is unwilling to accept DNR identification as evidence of the existence of a declaration or do not resuscitate order, that facility shall take all reasonable steps to notify the patient or, if the patient is not able to make treatment decisions, the patient's guardian, of the facility's policy and shall take all reasonable steps to effect the transfer of the patient to the patient's home or to a facility where the provisions of this chapter can be carried out.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 3 ch 104 SLA 1994)

SECTION 18.12.060 Immunities. (a) In the absence of actual notice of the revocation of a declaration or do not resuscitate order, as applicable, the following, while acting in accordance with the do not resuscitate protocol adopted under AS 18.12.035 or with the

other requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(1) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient or the withholding or withdrawal of cardiopulmonary resuscitation from a patient for whom a do not resuscitate order has been issued or who possesses DNR identification;

(2) a person who participates in the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under the direction or with the authorization of a physician or upon discovery of DNR identification upon a person;

(3) persons, including emergency medical technicians, who cause or participate in providing cardiopulmonary resuscitation or other life-sustaining procedures under AS 18.12.035(d) or because a person has made a do not resuscitate order ineffective under AS 18.12.035(e);

(4) the health care facility in which the providing, withholding, or withdrawal occurs.

(b) A physician, a health care professional, or a health care facility is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 4 ch 104 SLA 1994; am Sec. 15 ch 80 SLA 1997)

SECTION 18.12.070 Penalties. (a) An attending physician who fails to comply with a do not resuscitate order or the declaration of a qualified patient or to make the necessary arrangements to effect a transfer under AS 18.12.050 has no right to compensation for medical services provided to a patient after withholding or withdrawal should have been effective or after transfer should have occurred and may be liable to the patient and to the heirs of the patient for a civil penalty not to exceed \$1,000 plus the actual costs associated with the failure to comply with the order or declaration, and this shall be the exclusive remedy at law for damages.

(b) A person who wilfully conceals, cancels, defaces, obliterates, or damages the DNR identification or declaration of another person without the other's consent or who falsifies or forges a revocation of the DNR identification or declaration of another person may be civilly liable to the other person and to the heirs of the other person.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 5 ch 104 SLA 1994)

SECTION 18.12.080 General provisions. (a) Death resulting from the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under a do not resuscitate order or protocol, under a declaration, or upon discovery of DNR identification on a person and in accordance with this chapter does not, for any purpose, constitute a suicide or homicide.

(b) The issuing of a do not resuscitate order, the possession of DNR identification, or the making of a declaration under AS 18.12.010 does not affect in any manner the sale, procurement, or issuance of a policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient or the withholding or withdrawal of cardiopulmonary resuscitation from an insured patient who possesses DNR identification or for whom a do not resuscitate order has been issued, notwithstanding any term of the policy to the contrary.

(c) A physician, health care facility, or other health care provider, and a health care service plan, insurer issuing health insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan, may not require a person to execute a declaration, obtain a do not resuscitate order from a physician, or possess DNR identification as a condition for being insured for, or receiving, health care services.

(d) This chapter creates no presumption concerning the intention or intended treatment of an individual who does not have DNR identification, has not executed a declaration, or for whom a do not resuscitate order has not been issued with respect to the use, withholding, or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures.

(e) Nothing in this chapter increases or decreases the right of a patient to make decisions regarding use of cardiopulmonary resuscitation or other life-sustaining procedures as long as the patient is able to do so, or impairs or supersedes any right or responsibility that a person has to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the provisions of this chapter are cumulative. (f) This chapter does not condone, authorize, or approve mercy killing or euthanasia.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 6 - 10 ch 104 SLA 1994; am Sec. 1 ch 56 SLA 1996)

SECTION 18.12.090 Recognition of declarations and orders executed, issued, or authorized in other states. A declaration, including a declaration containing an anatomical gift, do not resuscitate order, or DNR identification executed, issued, or authorized in

another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for purposes of this chapter.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 11 ch 104 SLA 1994; am Sec. 16 ch 80 SLA 1997)

SECTION 18.12.100 Definitions. In this chapter,

- (1) "anatomical gift" means an anatomical gift under AS 13.50;
- (2) "attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient;
- (3) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation;
- (4) "declaration" means a document executed in accordance with the requirements of AS 18.12.010;
- (5) "DNR identification" means identification substantially similar to that approved under AS 18.12.037;
- (6) "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a particular person;
- (7) "do not resuscitate protocol" means the protocol developed under AS 18.12.035(b);
- (8) "health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;
- (9) "life-sustaining procedure" means a medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process;
- (10) "physician" means a person licensed to practice medicine in this state or an officer in the regular medical service of the armed services of the United States or the United States Public Health Service while in the discharge of their official duties, or while volunteering services without pay or other remuneration to a hospital, clinic, medical office, or other medical facility in the state;
- (11) "qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition;
- (12) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two



physicians, when available, who have personally examined the patient, one of whom must be the attending physician, result in death within a relatively short time.

HISTORY (Sec. 1 ch 144 SLA 1986; am Sec. 12 ch 104 SLA 1994; am Sec. 17 ch 80 SLA 1997)